

ORDINANCE NO. 2014- \_\_\_\_\_

An Ordinance concerning the construction of additions and improvements to the waterworks of the Town of Whitestown, Indiana, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said waterworks, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the Town of Whitestown, Indiana (the “Town”) has heretofore established, constructed and financed its waterworks, and now owns and operates said waterworks pursuant to Indiana Code 8-1.5, as in effect on the issue date of the bonds authorized herein, and other applicable laws (the “Act”) (all references hereinafter to the Indiana Code are designated as “IC” followed by the applicable code section or sections); and

WHEREAS, the Town Council of the Town (the “Town Council”) finds that certain improvements and extensions to said works are necessary; that plans, specifications and estimates have been prepared and filed by GRW Engineers, Inc., the engineers employed by the Town for the construction of said improvements and extensions (as more fully set forth in summary fashion in Exhibit A hereto and made a part hereof) (the “Project”), which plans and specifications have been or will be submitted to all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management, and will be approved by the aforesaid governmental authorities and are incorporated herein by reference and open for inspection at the office of the Clerk-Treasurer as required by law; and

WHEREAS, the Town will advertise and receive bids for the Project; said bids will be subject to the Town’s determination to construct said Project and subject to the Town obtaining funds to pay for said Project; that on the basis of the engineering estimates for the Project, the cost of said Project, including estimated incidental expenses, is in the estimated amount of Three Hundred Fifty Thousand Dollars (\$350,000); and

WHEREAS, the Town Council finds that it is necessary to finance the costs of the Project by the issuance of waterworks revenue bonds, in one or more series, in an aggregate principal amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000) and, if necessary, bond anticipation notes (the “BANs”); and

WHEREAS, the Town Council finds that there are outstanding bonds of the waterworks payable out of the Net Revenues (as hereinafter defined) thereof designated as (i) the “Waterworks Revenue Bonds of 2001”, originally issued in the principal amount of \$150,000, now outstanding in the principal amount of \$64,533 and maturing annually on April 1 of each year over a period ending April 1, 2021 (the “2001 Bonds”); (ii) the “Waterworks Revenue Bonds, Series 2005”, originally issued in the principal amount of \$1,212,000, now outstanding in the principal amount of \$870,000 and maturing annually on January 1 of each year over a period ending January 1, 2027 (the “2005 Bonds”); (iii) the “Waterworks Refunding Revenue Bonds, Series 2009” originally issued in the principal amount of \$3,255,000, now outstanding in the principal amount of \$2,650,000 and maturing annually on January 1 of each year over a period

ending January 1, 2029 (the “2009 Bonds”); (iv) the “Waterworks Revenue Bonds, Series 2010”, originally issued in the principal amount of \$1,400,000, now outstanding in the principal amount of \$1,185,000 and maturing annually on January 1 of each year over a period ending January 1, 2031 (the “2010 Bonds”); and (v) the “Waterworks Revenue Bonds, Series 2013”, originally issued in the principal amount of \$3,200,000, now outstanding in the principal amount of \$3,055,000 and maturing annually on January 1 of each year over a period ending January 1, 2034 (the “2013 Bonds”), which 2001 Bonds, 2005 Bonds, 2009 Bonds, 2010 Bonds and 2013 Bonds (collectively, the “Outstanding Parity Bonds”) constitute a first charge on the Net Revenues of the waterworks; and

WHEREAS, the ordinances authorizing the Outstanding Parity Bonds permit the issuance of additional bonds ranking on a parity with the Outstanding Parity Bonds provided certain conditions can be met, and the Town finds that the finances of the waterworks of the Town will enable it to meet the conditions for the issuance of additional parity bonds and that, accordingly, the revenue bonds authorized herein shall rank on a parity with the Outstanding Parity Bonds; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the waterworks, on a parity with the Outstanding Parity Bonds, and are to be issued subject to the provisions of the laws of the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the Town desires to authorize the issuance of BANs hereunder, if necessary, payable solely from the proceeds of sewage works revenue bonds issued hereunder, and to authorize the refunding of said BANs, if issued; and

WHEREAS, the Town has applied to the United States Department of Agriculture’s Rural Development Program (“RD”) for financing for the Project and expects that RD will purchase the bonds herein authorized in the principal amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000); and

WHEREAS, the Town Council finds that proceeds of the bonds to be issued pursuant to this ordinance and, if issued, BANs, may be applied to the costs of reimbursement of the Town for preliminary expenditures incurred by the Town on costs of the Project pursuant to Section 1.150-2 of the Treasury Regulations on Income Tax; and

WHEREAS, the Town has removed the waterworks from the jurisdiction of the Indiana Utility Regulatory Commission (the “Commission”) for the approval of rates and charges and financings; consequently, the approval of the Commission will not be required prior to the issuance of the bonds or BANs herein authorized; and

WHEREAS, the Town Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said revenue bonds and BANs have been complied with in accordance with the provisions of the Act; now, therefore,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, THAT:

Section 1. Authorization of Project. The Town proceed with the construction of the Project pursuant to the plans and specifications therefore as prepared and filed by GRW Engineers, Inc., the consulting engineers employed by the Town, which plans and specifications are incorporated herein by reference, are on file in the office of the Clerk-Treasurer of the Town and open for public inspection pursuant to IC 36-1-5-4. The estimated cost for the construction of said Project will not exceed Three Hundred Fifty Thousand Dollars (\$350,000), plus investment earnings on the BAN and bond proceeds, without further authorization from the Town Council. The terms “waterworks,” “waterworks system,” “works,” “system,” and words of like import where used in this ordinance shall be construed to mean and include (i) the existing waterworks system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions, and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired and (ii) so long as any Outstanding Parity Bonds are held by the Indiana Finance Authority, the Drinking Water System as defined in any Financial Assistance Agreements between the Town and the Indiana Finance Authority relating to the Outstanding Parity Bonds (the “Financial Assistance Agreements”). The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which plans and specifications and Project are hereby approved. The Project shall be constructed and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Section 2. Issuance of BANs. The Town shall issue, if necessary, its BANs, in one or more series, for the purpose of procuring interim financing to apply on the cost of the Project and to pay cost of issuance. The Town may issue its BANs in an aggregate principal amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000) to be designated “Waterworks Bond Anticipation Notes, Series \_\_\_\_”, to be completed with the appropriate series designation. The BANs shall be sold at not less than 99% of their par value, numbered consecutively from 1 upward and shall be in multiples of One Dollar (\$1) or One Thousand Dollars (\$1,000), as designated in the purchase agreement for the BANs. The BANs shall be dated as of the date of delivery thereof and shall bear interest at a rate or rates not to exceed 5.5% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs) payable either upon maturity or redemption.

The BANs will mature over a period ending no later than five (5) years from their date of delivery, as determined by the Clerk-Treasurer, with the advice of the Town’s financial advisor, at the time of the sale of the BANs. Any BANs which mature over a period less than five (5) years after their date of delivery shall be subject to renewal or extension for a term not exceeding five (5) years from the date of delivery of the BANs as originally issued. In the event of such renewal or extension, the interest rate or rates on the BANs as renewed or extended shall not exceed 5.5% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs, as renewed or extended).

The BANs shall be registered in the name of the purchasers thereof. Interest on the BANs shall be calculated on the basis of a year consisting of 365 days and the actual number of days elapsed.

The BANs shall be issued pursuant to IC 4-4-11 and IC 13-18-21 if sold to the Indiana Finance Authority, pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank (the "Bond Bank") or pursuant to IC 5-1-14-5 if sold to a financial institution. The Town shall pledge to the payment of the principal of and interest on the BANs the proceeds from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. In the event the BANs are sold to the Bond Bank, the Town Council President and Clerk-Treasurer of the Town are hereby authorized to execute and deliver any such applications, documents, agreements and certificates relating to the program for the purchase of such BANs by the Bond Bank (the "Bond Bank BAN Purchase Documents"), including any extensions or renewals of such BANs, provided the terms of any such Bond Bank BAN Purchase Documents are consistent with the terms and provisions of this ordinance.

Section 3. Issuance of Bonds. The Town shall issue its waterworks revenue bonds, in one or more series, in the aggregate principal amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000) to be designated "Waterworks Revenue Bonds, Series 201\_ \_", to be completed with the year in which issued and, if necessary, appropriate series designation (the "Bonds"), for the purpose of procuring funds to apply on the cost of the Project, refunding the BANs, if issued, and costs of issuance. If the Bonds are sold in more than one series, any sale and issuance of Bonds which follows the issuance of the first series of Bonds hereunder shall rank on a parity with such first series of Bonds and must satisfy the requirements established by Section 19 of this ordinance.

The Bonds shall be issued and sold at a price not less than the par value thereof. The Bonds shall be issued in denominations of \$1,000 or integral multiples thereof and shall be numbered consecutively from 1 up. The Bonds shall be originally dated as of their date of delivery and shall bear interest at a rate or rates not exceeding 5.5% per annum (the exact rate or rates to be determined through negotiation with RD). Interest shall be payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or the first July 1 following the date of delivery of the Bonds. Principal shall be payable in lawful money of the United States of America at the principal office of the Paying Agent (as hereinafter defined). The Bonds shall mature annually on January 1 over a period ending no later than forty (40) years after substantial completion of the Project, and in such amounts that will, as determined by the Clerk-Treasurer with the advice of the Town's financial advisor, (i) produce as level annual debt service as practicable with \$1,000 denominations, (ii) produce as level annual debt service as practicable with \$1,000 denominations and taking into account the annual debt service on the Outstanding Parity Bonds or (iii) otherwise enable the Town to meet the requirements for financing from RD.

The Bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the waterworks after deduction only for the payment of the reasonable expenses of operation, repair and maintenance but not including

payment in lieu of taxes) of the waterworks, on a parity with the payment of the Outstanding Parity Bonds. Interest on the Bonds shall be calculated on the basis of a year consisting of 365 days and the actual number of days elapsed.

Section 4. Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to select and appoint a qualified financial institution to serve as Registrar and Paying Agent for the Bonds and the BANs, which Registrar is hereby charged with the responsibility of authenticating the Bonds (the “Registrar” or “Paying Agent”). The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of a Registrar and Paying Agent. The Clerk-Treasurer is further authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid from the Waterworks Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges. As to the BANs and as to the Bonds, if sold to a purchaser that does not object to such designation, the Clerk-Treasurer may serve as Registrar and Paying Agent and is, in such case, hereby charged with the duties of a Registrar and Paying Agent.

The principal of the Bonds shall be payable at the principal office of the Paying Agent and all payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as of the fifteenth day of the month preceding each payment (the “Record Date”), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).

All payments on the BANs and Bonds shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each Bond shall be transferable or exchangeable only upon the books of the Town kept for that purpose at the principal office of the Registrar, by the registered owner thereof in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and of the same maturity shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the Town. The Town and the Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

Interest on Bonds which are authenticated on or before the Record Date which precedes the first interest payment date shall be paid from their original date. Interest on Bonds authenticated subsequent to the Record Date which precedes the first interest payment date thereon shall be paid from the interest payment date to which interest has been paid as of the date on which such Bonds are authenticated, unless a Bond is authenticated between the Record Date and the interest payment date in which case the interest shall be paid from such interest payment date.

Section 5. Redemption of BANs. Except with as herein provided with respect to any BANs sold to the Bond Bank, the BANs are prepayable by the Town, in whole or in part, on any date, upon seven (7) days' notice to the owner of the BANs, without any premium. In the event the BANs are sold to the Bond Bank, the redemption terms of the BANs, if any, shall be as set forth in the Bond Bank BAN Purchase Documents.

Section 6. Redemption of Bonds. Any one or more installments of principal of fully registered Bonds of this issue shall be redeemable or prepayable at the option of the Town from any funds regardless of source, in whole, or from time to time in part, in any multiple of One Thousand Dollars (\$1,000), on any date, at the principal amount thereof and accrued interest to the date fixed for redemption, without any premium. Prepayments of installments of principal of fully registered Bonds shall be made in inverse order of maturities outstanding at the time of prepayment, and in inverse order for Bonds if less than an entire maturity is called. Notice of prepayment of principal on a fully registered Bond shall be given by registered mail at least thirty (30) days prior to the date of such redemption or prepayment to the registered owner at its address as shown on the registration record of the Town. The notice of prepayment shall specify the date and place of prepayment, the dates of maturity of the Bonds subject to prepayment, and identification of installments of principal to be prepaid. The place of prepayment of installments of principal shall be the office of the Clerk-Treasurer of the Town who shall record the prepayments on the Bonds. Interest on the installments of principal to be prepaid shall cease on the date fixed in such notice if sufficient funds are available at the place of prepayment to pay the price on the date so named, including interest to said date. If any fully registered Bond called for prepayment shall not be presented on the date and at the place designated, the Town shall hold in trust in the Town's depository bank sufficient funds to effect such prepayment in full, and thereafter the owner of such Bond shall be entitled to payment only from such trust funds and the prepayment thereof shall be deemed to have been effected and the Bonds no longer outstanding.

Section 7. Execution of Bonds and BANs; Pledge of Net Revenues to Bonds. The BANs and Bonds shall be signed in the name of the Town by the manual or facsimile signature of the Town Council President and attested by the manual or facsimile signature of the Clerk-Treasurer, who shall affix the seal of said Town to each of said Bonds and BANs manually or shall have the seal imprinted or impressed thereon by facsimile. These officials, by the signing of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on said Bonds and BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. The Bonds shall

also be authenticated by the manual signature of an authorized representative of the Registrar and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

The Bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the waterworks of the Town, on a parity with the Outstanding Parity Bonds. The Town shall not be obligated to pay said Bonds or the interest thereon except from the Net Revenues of said works, and said Bonds shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State of Indiana. Said Bonds and BANs shall have all of the qualities of negotiable instruments under the laws of the State of Indiana subject to the provisions for registration herein.

Section 8. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

*Form of Bond*

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UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF BOONE

TOWN OF WHITESTOWN, INDIANA

WATERWORKS REVENUE BOND, SERIES 201\_\_

The Town of Whitestown, Indiana (the "Town"), in Boone County, State of Indiana, for value received, hereby promises to pay to the registered owner solely out of the special revenue fund hereinafter referred to, the principal amount of

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

on January 1 in the years and amounts as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
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(subject to any prepayments of principal as hereinafter provided) and to pay interest on the unpaid balance hereof from the dates of payment as recorded hereon until the principal is paid, at the rate of \_\_\_\_% per annum, payable semiannually on January 1 and July 1, beginning

\_\_\_\_\_, 201\_. Interest shall be calculated on the basis of 365 days and the actual number of days elapsed.

Both the principal and interest of this Bond are payable in lawful money of the United States of America, by check mailed to the registered owner one business day prior to the payment date at the address as it appears on the registration records of the Town. Upon final payment, this Bond shall be delivered to the Town and cancelled.

This Bond shall not constitute an indebtedness of the Town of Whitestown, Indiana, within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the Town shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the Net Revenues.

This Bond is the only one of an authorized issue of Bonds of the Town of Whitestown, Indiana, in the total amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Bonds") [for this series], issued for the purpose of providing funds to be applied on the cost of construction of additions and improvements to the Town's waterworks [(the "Project")], [to refund interim notes issued in anticipation of the Bonds] and to pay incidental expenses, as authorized by an Ordinance adopted by the Town Council of the Town of Whitestown, Indiana, on the \_\_\_\_ day of \_\_\_\_\_, 2014, entitled "An Ordinance concerning the construction of additions and improvements to the waterworks of the Town of Whitestown, Indiana, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said waterworks, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" (the "Ordinance"), and in strict compliance with the provisions of Indiana Code 8-1.5, as in effect on the issue date of the Bonds (the "Act").

Pursuant to the provisions of said Act and said Ordinance, the principal and interest of this Bond, and any bonds hereafter issued on a parity therewith, are payable solely from the Waterworks Sinking Fund (continued by the Ordinance) to be provided from the Net Revenues (defined as the gross revenues after the deduction only for the payment of the reasonable expenses of operation, repair and maintenance but not including payment in lieu of taxes) of the waterworks of the Town. The payment of this Bond ranks on a parity with the payment of the Outstanding Parity Bonds (as defined in the Ordinance)[and the \_\_\_\_\_ Bonds]. The Town reserves the right to issue additional bonds on a parity with this Bond and the issue of which it is a part, as provided in the Ordinance.

The Town of Whitestown, Indiana irrevocably pledges the entire Net Revenues of said waterworks to the prompt payment of the principal of and interest on the Bonds authorized by said Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the Outstanding Parity Bonds [and the \_\_\_\_\_ Bonds], to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of said works and for the payment of the sums required to be paid into the Waterworks Sinking Fund under the provisions of the Act



and the Ordinance. If the Town or the proper officers of the Town shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this Bond, the owner of this Bond shall have all of the rights and remedies provided under Indiana law, including the provisions of the Act.

[The Town of Whitestown, Indiana has designated the Bonds as qualified tax-exempt obligations to qualify for the \$10,000,000 exception from the provisions of Section 265(b) of the Internal Revenue Code of 1986, as amended, relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations.]

The Town of Whitestown, Indiana further covenants that it will set aside and pay into its Waterworks Sinking Fund a sufficient amount of the Net Revenues of said works to meet (a) the interest on all bonds which by their terms are payable from the revenues of the waterworks, as such interest shall fall due, (b) the necessary fiscal agency charges for paying the bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the waterworks, as such principal shall fall due, and (d) an additional amount to create and maintain the reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of said works, on a parity with the Outstanding Parity Bonds[and the \_\_\_\_\_ Bonds].

This Bond may be transferred upon presentation of the Bond and an executed assignment to the Clerk-Treasurer of the Town for notation of the same upon this Bond and the registration record of the Town kept for that purpose or may be exchanged as provided in the Ordinance.

Installments of principal of this Bond may, at the option of the Town, be prepaid in whole or in part on any date after issuance, in any multiple of One Thousand Dollars (\$1,000), upon thirty (30) days' notice to the registered owner, at par and accrued interest to the date of prepayment. Interest on the installments of principal so prepaid shall cease on such date of prepayment. This Bond must be presented at the office of the Clerk-Treasurer of the Town for any such prepayments.

If this Bond shall not be presented for payment or redemption on the date fixed herefore, the Town may deposit in trust with its depository bank, an amount sufficient to pay such Bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the Town shall have no further obligation or liability in respect thereto.

This Bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended without the consent of the owners of the Bonds as provided in the Ordinance if the Town Council of the Town determines, in its sole discretion, that the amendment shall not adversely affect the rights of any owners of the Bonds.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the preparation and complete execution, issuance and delivery of this Bond have been done and performed in regular and due form as provided by law.

IN WITNESS WHEREOF, the Town of Whitestown, Indiana, in Boone County, Indiana, has caused this Bond to be executed in its corporate name by the President of its Town Council, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually by its Clerk-Treasurer, as of \_\_\_\_\_, 201\_.

TOWN OF WHITESTOWN, INDIANA

By: \_\_\_\_\_  
President, Town Council

[SEAL]

Attest:

\_\_\_\_\_  
Clerk-Treasurer

(Form of Registration)

#### REGISTRATION ENDORSEMENT

This Bond can be transferred and registered only at the office of the Clerk-Treasurer of the Town of Whitestown, Indiana. No writing hereon except by the Clerk-Treasurer.

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Employer I.D. # or Social Security #, If applicable</u>	<u>Clerk-Treasurer</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

#### RECORD OF PAYMENT FOR BOND

<u>Date of Payment</u>	<u>Amount</u>	<u>Acknowledgment of Receipt by Clerk-Treasurer</u>	<u>Guarantee of Clerk-Treasurer's Signature</u>
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(NOTE: This should be a separate sheet)

### PREPAYMENT RECORD

Principal Installments on Which Payments  
Have Been Made Prior to Maturity

<u>Date</u>	<u>Principal Amount</u>	<u>Principal Payment</u>	<u>Balance</u>	<u>Date Paid</u>	<u>Name of Authorized Official and Title</u>
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(NOTE: This should be a separate sheet)

*End of Bond Form*

Section 9. Preparation and Sale of BANs and Bonds. The Clerk-Treasurer is hereby authorized and directed to have said BANs and Bonds prepared, and the Town Council President and Clerk-Treasurer are hereby authorized and directed to execute said BANs and Bonds in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver said BANs to the purchaser thereof and said Bonds to RD, provided that at the time of said delivery the Clerk-Treasurer shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99% of the face value of said BANs and not less than the par value of said Bonds, as the case may be. The Town may receive payment for the Bonds and BANs in installments. The Bonds herein authorized, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the Town, payable out of the Net Revenues of the Town's waterworks to be set aside into the Waterworks Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the Town are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

Section 10. Use of Proceeds. The accrued interest received at the time of the delivery of the Bonds and premium, if any, shall be deposited in the Waterworks Sinking Fund. The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the Town, in a special account or accounts to be designated as "Town of Whitestown, Waterworks Construction Account" (the "Construction Account"). All funds deposited to the credit of the Waterworks Sinking Fund or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds or BANs. The cost of obtaining

the legal services of Bose McKinney & Evans LLP shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Waterworks Sinking Fund and used solely for the purposes thereof or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

The Town hereby declares its “official intent”, as such term is used in the Reimbursement Regulations, to reimburse the Town’s advances to the Project, such advances from the Town’s General Fund or Improvement Fund (as hereinafter defined), from proceeds of the BANs or the Bonds, as anticipated by this ordinance. The Town reasonably expects to make such advances for the costs of the Project.

Section 11. Waterworks Revenue Fund. There is hereby continued the “Waterworks Revenue Fund” (the “Revenue Fund”) into which there shall be deposited upon receipt, all income and revenues of the waterworks. The Revenue Fund shall be maintained separate and apart from all other bank accounts of the Town. Out of the revenues deposited to the Revenue Fund, the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the requirements of the Waterworks Sinking Fund shall be met, and the costs of replacements, extensions, additions and improvements shall be paid. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13. Other than for the payment of PILOTs (as hereinafter defined), no moneys derived from the revenues of the waterworks shall be transferred to the general fund of the Town or be used for any purpose not connected with the waterworks.

Section 12. Operation and Maintenance Fund. The “Operation and Maintenance Fund” (the “Operation and Maintenance Fund”) is hereby continued. On the last day of each calendar month, a sufficient amount of revenues of the waterworks shall be transferred from the Revenue Fund to the Operation and Maintenance Fund so that the balance maintained in this fund shall be sufficient to pay the expenses of operation, repair and maintenance of the waterworks for the then next succeeding two (2) calendar months. The moneys credited to this fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the waterworks on a day-to-day basis, but none of the moneys in the Operation and Maintenance Fund shall be used for depreciation, replacements, improvements, extensions or additions. Any balance in the Operation and Maintenance Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the waterworks payable from the Net Revenues.

Section 13. Waterworks Sinking Fund. There is hereby continued a sinking fund for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the waterworks, and the payment of any fiscal agency charges in connection with the payment of bonds and interest, which fund shall be designated the "Waterworks Sinking Fund" (the "Sinking Fund"). There shall be set aside and deposited in the Sinking Fund, as available, and as provided below, a sufficient amount of the Net Revenues of the waterworks to meet the requirements of the Bond and Interest Account and of the Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Reserve Account equal the amount needed to redeem all of the then outstanding bonds of the waterworks payable from the Net Revenues and to pay any fiscal agency charges.

(a) Bond and Interest Account. There is hereby continued, within said Sinking Fund, the "Bond and Interest Account". After making the credit to the Operation and Maintenance Fund, there shall be credited on the last day of each calendar month from the Revenue Fund into the Bond and Interest Account an amount of the Net Revenues equal to at least (i) one-twelfth ( $1/12$ ) of the principal of all outstanding bonds payable from Net Revenues of the works on the next succeeding principal payment date and (ii) one-sixth ( $1/6$ ) of the interest of all then outstanding bonds payable from Net Revenues of the works on the then next succeeding interest payment date, until the amount of principal and interest payable on the then next succeeding principal and interest payment dates shall have been so credited. There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges for paying principal of and interest on outstanding bonds as the same become payable. The Town shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(b) Reserve Account. There is hereby continued, within the Sinking Fund, the "Reserve Account" (the "Reserve Account"). On the date of delivery of the Bonds, the Town may deposit funds on hand into the Reserve Account. The balance to be maintained in the Reserve Account shall equal but not exceed the maximum annual debt service on the Outstanding Parity Bonds, the Bonds and any bonds issued in the future on a parity with the Bonds (the "Reserve Requirement"). If the initial deposit into the Reserve Account does not cause the balance therein to equal the Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and a protection against default in the payment of principal of and interest on the Outstanding Parity Bonds, the Bonds and any bonds issued in the future on a parity with the Bonds ("Parity Bonds"), and the moneys in the Reserve Account shall be used to pay current principal and interest on the Outstanding Bonds, the Bonds and any Parity Bonds, to the extent that moneys in the Bond and Interest

Account are insufficient for that purpose. Any deficiencies in credits to the Reserve Account shall be promptly made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. If moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on any Outstanding Parity Bonds, Bonds or Parity Bonds, then this depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits to the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement shall either be transferred to the Waterworks Improvement Fund or be used for the purchase of outstanding bonds payable from the Net Revenues of the waterworks or installments of principal of fully registered bonds payable from the Net Revenues of the waterworks.

Section 14. Waterworks Improvement Fund. After meeting the requirements of the Operation and Maintenance Fund and the Sinking Fund, any excess revenues shall be transferred or credited to the Waterworks Improvement Fund (the "Improvement Fund"), hereby continued, and said fund shall be used for improvements, replacement, additions and extensions of the waterworks. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of and interest on the then outstanding bonds payable from the Net Revenues or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the waterworks.

The Town may make payments in lieu of taxes ("PILOTs") semiannually on January 1 and July 1 of each year from the Improvement Fund to the Town. PILOTs may only be made if the amounts required to be held in the Operation and Maintenance Fund and the Sinking Fund are so held after considering any such contemplated PILOT payment.

Section 15. Maintenance of Funds; Investments. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the Town. The Operation and Maintenance Fund and the Improvement Fund may be maintained in a single account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the Town and apart from the Sinking Fund account or accounts. All moneys deposited in the funds and accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

Section 16. Maintenance of Books and Records. The Town shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from said works and all disbursements made on account of the works, also all transactions relating to said works. There shall be furnished, upon written request, to any owner of the Bonds, the most recent audit report of the waterworks prepared by the State Board of Accounts. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer of the Town. Any owner of the

Bonds then outstanding shall have the right at all reasonable times to inspect the works and all records, accounts, statements, audits, reports and data of the Town relating to the waterworks. Such inspections may be made by representatives duly authorized by written instrument.

Section 17. Rate Covenant. The Town covenants and agrees that it will establish and maintain just and equitable rates and charges for the use of and the service rendered by the waterworks, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the waterworks, or that in any way uses or is served by the waterworks, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the Town) to provide for the proper operation, repair and maintenance of the waterworks, to comply with and satisfy all covenants contained in this ordinance and in any Financial Assistance Agreements, and to pay all obligations of the waterworks and of the Town with respect to the waterworks. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance of the waterworks and the requirements of the Sinking Fund. The rates and charges so established shall apply to any and all use of such works by and service rendered to the Town, and shall be paid by the Town as the charges accrue.

Section 18. Defeasance of Bonds. So long as RD is the owner of the Bonds, the Bonds will not be defeased without the consent of RD. When RD has provided such consent, or if RD is no longer the owner of the Bonds, and the Bonds issued hereunder shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or any portion thereof and coupons then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the Town's waterworks.

Section 19. Additional Bond Provisions. The Town reserves the right to authorize and issue additional BANs at any time ranking on parity with the BANs. The Town reserves the right to authorize and issue additional Parity Bonds, payable out of the Net Revenues of its waterworks, ranking on parity with the Bonds, for the purpose of financing the cost of future additions, extensions and improvements to the waterworks, or to refund obligations, subject to the following conditions:

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the Net Revenues of the waterworks shall have been paid to date in accordance with their terms. The Reserve Requirement shall be satisfied for the additional Parity Bonds either at the time of

delivery of the additional Parity Bonds or over a five year or shorter period, in a manner which is commensurate with the requirements established in Section 13(b) of this ordinance.

(b) The Net Revenues of the waterworks in the fiscal year immediately preceding the issuance of any such Parity Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued; or, prior to the issuance of said Parity Bonds, the water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous year's operations would have produced Net Revenues for said period equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds payable from the Net Revenues of the waterworks and the additional Parity Bonds proposed to be issued. For purposes of this subsection, the records of the waterworks shall be analyzed and all showings prepared by a certified public accountant employed by the Town for that purpose. In addition, for purposes of this subsection (b), until January 1, 2016, Net Revenues shall not include revenues from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other one time charges.

(c) The Net Revenues of the waterworks in the fiscal year immediately following the year in which such Parity Bonds are issued shall be not less than one hundred twenty percent (120%) of the average annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued. For purposes of this subsection, all showings shall be prepared by a certified public accountant employed by the Town for that purpose.

(d) The interest on the additional Parity Bonds shall be payable semiannually on the first days of January and July and the principal on, or mandatory sinking fund redemption dates for, the additional Parity Bonds shall be payable annually on January 1.

Section 20. Further Covenants. For the purpose of further safeguarding the interests of the holders of the BANs and Bonds, it is specifically provided as follows:

(a) All contracts let by the Town in connection with the construction of said Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to one hundred percent (100%) of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employer's liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) Said Project shall be constructed under the supervision and subject to the approval of such competent engineers as shall be designated by the Town. All estimates for work done or material furnished shall first be checked by the engineers and approved by the Town.



(c) The Town shall at all times maintain its waterworks in good condition and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the BANs or Bonds herein authorized are outstanding, the Town shall maintain insurance on the insurable parts of said works of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana and, so long as any Outstanding Parity Bonds are held by the Indiana Finance Authority, shall be acceptable to the Indiana Finance Authority. Insurance proceeds and condemnation awards shall be used to replace or repair the waterworks, unless, so long as any Outstanding Parity Bonds are held by the Indiana Finance Authority, the Indiana Finance Authority shall consent to a different use of such proceeds or awards.

(e) So long as any of the BANs or Bonds are outstanding, the Town shall not mortgage, pledge or otherwise encumber the property and plant of its waterworks system, or any part thereof, and shall not sell, lease or otherwise dispose of any part of the same, excepting only such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility. So long as any Outstanding Parity Bonds are held by the Indiana Finance Authority, the Town shall obtain the prior consent of the Indiana Finance Authority prior to the disposal of any portion of the waterworks as described herein.

(f) Except as hereinbefore provided in Section 19 hereof, so long as any of the Bonds herein authorized are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said waterworks shall be authorized, executed, or issued by the Town except such as shall be made subordinate and junior in all respects to the Bonds herein authorized, unless all of the Bonds herein authorized are redeemed, retired or defeased pursuant to Section 18 hereof coincidentally with the delivery of such additional bonds or other obligations.

(g) The provisions of this ordinance shall constitute a contract by and between the Town and the owners of the Bonds and BANs herein authorized, and after the issuance of said Bonds or BANs, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said Bonds or BANs nor shall the Town Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of said Bonds, BANs or the interest thereon remain unpaid. Except for the changes set forth in Section 23(a)-(f), this ordinance may be amended, however, without the consent of BAN or Bond owners, if the Town Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the BANs or Bonds.

(h) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of said governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth. The owners of said Bonds shall have all of the rights,

remedies and privileges set forth under Indiana law in the event of default in respect to any of the provisions of this ordinance or the governing Act, including the right to have a receiver appointed to administer said waterworks, in the event the Town shall fail or refuse to fix and collect sufficient rates and charges, or shall fail or refuse to operate and maintain said system and to apply the revenues derived from the operation thereof, or if there be a default in the payment of the principal of or interest on any of the Bonds herein authorized or in the event of default in respect to any of the provisions of this ordinance or the governing Act.

Section 21. Investment of Funds. The Clerk-Treasurer is hereby authorized to invest moneys pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law. The Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts continued, created or referenced herein. In order to comply with the provisions of this ordinance, the Clerk-Treasurer is hereby authorized and directed to employ consultants or attorneys from time to time to advise the Town as to requirements of federal law to preserve the tax exclusion. The Clerk-Treasurer may pay any such fees as operating expenses of the waterworks.

Section 22. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as existing on the date of issuance of the Bonds or BANs, as the case may be (the "Code") and as an inducement to purchasers of the Bonds and BANs, the Town represents, covenants and agrees that:

(a) The waterworks will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the Town or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the Town or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Bonds or BANs, as the case may be. If the Town enters into a management contract for the waterworks, the terms of the contract will comply with Internal Revenue Service Revenue Procedure 97-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds or BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or

payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the Town) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The Town reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraphs (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds or BANs, as the case may be.

(e) No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The Town will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the Town act in any other manner which would adversely affect such exclusion. The Town covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

(g) It shall not be an event of default under this ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

(h) The Town represents that:

(i) The Town is a governmental unit with general taxing powers, which powers include the power to impose taxes of general applicability that, when collected, may be used for the general purposes of the Town;

(ii) The BANs and the Bonds are not private activity bonds as defined in Section 141 of the Code;

(iii) At least 95% of the net proceeds of the BANs and Bonds will be used for local governmental activities of the Town or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Town;

(iv) The aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Town and all units subordinate to the Town, including on-behalf-of issuers and subordinate entities as those terms are defined in Regulations Section 1.148-8(c)(2), is not reasonably expected to exceed Five Million Dollars (\$5,000,000) in each of calendar years 2015 and 2016; and

(v) The Town has not been formed or availed of to otherwise avoid the purposes of the Five Million Dollar (\$5,000,000) size limitation.

Therefore the Town meets the requirements of Section 148(f)(4)(D) of the Code and will not have to rebate any arbitrage profits to the United States.

(i) The Town represents that:

(1) The Bonds and the BANs are not private activity bonds as defined in Section 141 of the Code;

(2) The Town hereby designates the Bonds and the BANs as qualified tax-exempt obligations for purposes of Section 265(b) of the Code;

(3) The reasonably anticipated amount of qualified tax-exempt obligations which will be issued by the Town, and all entities subordinate to the Town, during each of 2015 or 2016 does not exceed \$10,000,000; and

(4) The Town will not designate more than \$10,000,000 of qualified tax-exempt obligations during each of 2015 or 2016.

Therefore, the Bonds and the BANs qualify for the exception in the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to newly acquired tax-exempt obligations.

(j) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds or BANs, as the case may be.

Section 23. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 20(g), and not otherwise, the owners of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right, from time to time, anything contained in this ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Town of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the Town for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity of the principal of or interest on any Bond issued pursuant to this ordinance; or
- (b) A reduction in the principal amount of any Bond or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or
- (d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
- (e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (f) A reduction in the Reserve Requirement.

If the owners of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer of the Town, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Town or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the Town and all owners of Bonds issued pursuant to the provisions of this ordinance then outstanding, shall thereafter be determined exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the Town and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the Town and the consent of the owners of all the Bonds issued pursuant to this ordinance then outstanding.

Section 24. Issuance of BANs. The Town, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs to a financial institution, the Bond Bank or any other purchaser, pursuant to a BAN purchase agreement (the “Bond Anticipation Note Agreement”) to be entered into between the Town and the purchaser of the BAN or BANs. The Town Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the Town to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use

of the proceeds to repay the BAN or BANs. The Town Council President and the Clerk-Treasurer are hereby authorized and directed to execute a Bond Anticipation Note Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Town Council President and the Clerk-Treasurer may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith. As hereinbefore provided, in the event the BANs are sold to the Bond Bank, the Town Council President and Clerk-Treasurer are hereby authorized to execute and deliver any Bond Bank BAN Purchase Documents, including a Bond Anticipation Note Agreement and any extensions or renewals of the BANs, provided the terms of any such Bond Bank BAN Purchase Documents are consistent with the terms and provisions of this ordinance.

Section 25. Indiana Utility Regulatory Commission. The Town hereby acknowledges and confirms that its waterworks has been removed from the jurisdiction of the Commission for the approval of rates and charges and for financings.

Section 26. Tax Exemption. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance (the “Tax Sections”) which are designed to preserve the exclusion of interest on the BANs and Bonds from gross income under federal law (the “Tax Exemption”) need not be complied with if the Town receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption. At the time of delivery of the BANs or Bonds, the President of the Town Council or Clerk-Treasurer will execute post-issuance compliance procedures with respect to the BANs or Bonds, as the case may be, relating to continued compliance of the Town with respect to the Tax Sections to preserve the Tax Exemption.

Section 27. RD Covenants. So long as RD is the owner of any of the Bonds, the Town covenants that in addition to the other covenants, terms and conditions applicable to the Bonds, it will comply with all conditions set forth by RD in the Letter of Conditions, the Loan Resolution and any Loan Agreement.

Section 28. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith, except the ordinances authorizing the Outstanding Parity Bonds, are hereby repealed; provided, however, that this ordinance shall not be construed as adversely affecting the rights of the owners of the Outstanding Parity Bonds.

Section 29. Effective Date. This ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the Town Council of the Town of Whitestown, Indiana on this  
\_\_\_\_\_ day of \_\_\_\_\_, 2014.

TOWN OF WHITESTOWN, INDIANA  
TOWN COUNCIL

\_\_\_\_\_  
Eric Miller, President

\_\_\_\_\_  
Julie Whitman, Vice President

\_\_\_\_\_  
Dawn Semmler, Council Member

\_\_\_\_\_  
Kevin Russell, Council Member

\_\_\_\_\_  
Susan Austin, Council Member

ATTEST:

\_\_\_\_\_  
Amanda Andrews, Clerk-Treasurer

## EXHIBIT A

### *Description of Project*

The Project consists of all waterworks improvements necessary in connection with the following Royalton & Cozy Lane water and wastewater project summary:

The Royalton neighborhood is located in the southern portion of the Whitestown Service area southwest of the I-865 and I-65 interchange in Boone County, Indiana. Royalton consists of households that currently utilize on-site septic systems for wastewater treatment and groundwater wells for water. The proposed project will provide wastewater collection for the Royalton area.

The Cozy Lane area is located off of SR 334 and Indianapolis Road in the southern portion of the Whitestown Service area. Cozy Lane consists of three businesses that currently utilize private on-site septic systems for wastewater treatment and groundwater wells for water. The proposed project will provide both wastewater collection as well as water service for the area.

The chosen alternative chosen is a Low Pressure Grinder Pump System (LPGPS) and included water service at Cozy Lane.

The LPGPS includes approximately 3,800 lineal feet of small diameter pressure piping estimated at 1.5, 2, and 3 inches in diameter for the mainlines and 1.25 inch in diameter for service lines. The total project includes 17 users on the LPGPS system. The water service includes 900-LF of 8" water main. The total project includes 3 users receiving water service. It is anticipated that the majority of the collection and water systems would be installed in public right-of-ways. However, a small number of easements for the collection lines may be required at various locations throughout the project area. The installation of the collection system would utilize trenchless technology to minimize impacts to the community.

Additional information concerning the proposed Project is available in the plans and specifications for the Project prepared by GRW Engineers and on file with the Clerk-Treasurer of the Town.